

## **Title 7 - Probate**

### **[RULE 7159**

#### **PROBATE APPOINTED COUNSEL GENERAL ELIGIBILITY REQUIREMENTS**

- (a) As provided in the California Rules of Court, Rule 7.1101(g), in addition to the requirements set forth in Rule 7.1101, counsel appointed by the court must complete at least twelve hours of MCLE either during the attorney's current State Bar reporting period or the most recent period that has expired in the subjects of decedent estates, conservatorships/guardianships, or trust administration, and must meet the requirements for each specific area(s) of interest selected from the following:
- (1) **Decedent Estate and Trust Administration.** Prior to filing the application and within the past three years, the attorney must have represented parties in at least six different probate or trust administration court proceedings, including three decedent estate or trust proceedings from inception through final account and/or order for distribution. The attorney must have experience and/or training in tax-related issues sufficient to enable him or her to identify tax issues from the facts of the case and to competently represent the client's interests concerning the potential tax consequences of the particular matter.
  - (2) **Conservatorships.** Attorneys representing conservatees in Conservatorship proceedings must satisfy the requirements of California Rules of Court, Rule 7.1101(b)(2) and (f)(1).
  - (3) **Guardianships.** Attorneys representing wards in Guardianship proceedings must satisfy the requirements of California Rules of Court, Rule 7.1101(b)(1) and (f).
  - (4) **Conservatorships of the Person.** Prior to filing the application and within the past five years, the attorney must have represented parties in at least four conservatorship of the person matters (including at least two proceedings from their inception) which involve securing the appointment and qualification of the conservator of the person.
  - (5) **Limited Conservatorships.** Attorneys representing limited conservatees in Conservatorship proceedings must satisfy the requirements of California Rules of Court Title Seven, Rule 7.1101(b)(2). In addition, the attorney must understand the legal and medical issues arising out of developmental disabilities and the role of the Regional Center. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships either during the attorney's current State Bar reporting period or the most recent period that has expired.

Additions are shown with bold and brackets ([**example**]). Deletions are shown by ~~strikeout (example)~~.

- (6) **Estate Planning and Taxation.** Prior to filing the application and within the past three years, the attorney must have extensive experience in matters regarding estate planning, estate, gift, or income tax or related tax matters pertaining to trusts and decedent estates. The attorney must have represented parties in at least three substituted judgment (Probate Code section 2580 et seq.) or particular transaction matters (Probate Code section 3100 et seq.). The attorney must have at least ten hours of MCLE in the areas of estate planning and taxation either during the attorney's current State Bar reporting period or the most recent period that has expired.
- (7) **Medi-Cal Planning.** Prior to filing the application and within the past three years, the attorney must have represented parties in at least three Probate Code section 3100 petitions, including at least two in which there was a request to increase either the Community/Spouse Resource Allowance and/or to obtain a support order. The attorney must be familiar with the laws and regulations for Medi-Cal eligibility, and shall be knowledgeable on the rules regarding the increase of the CSRA/MMMNA, exempt assets, gifting rules, special needs trusts under 42 U.S.C. 1396p(d)(4)(a) and (c), and tax and estate planning ramifications related to Medi-Cal planning. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships either during the attorney's current State Bar reporting period or the most recent period that has expired.
- (8) **Compromises/Judgments and Special Needs Trusts for Minors/Persons with Disabilities.** Prior to filing the application and within the last three years, the attorney must have represented parties in at least three petitions for approval of compromise under Probate Code section 3500 or Code of Civil Procedure section 372 which involved creation of special needs trusts. The attorney must be familiar with the advantages and disadvantages of the various funding alternatives available under Probate Code section 3600 et seq., special needs trusts under 42 U.S.C. 1396p(d)(4)(a) and (c), and the application of MICRA to medical malpractice settlements. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships either during the attorney's current State Bar reporting period or the most recent period that has expired.
- (9) **Fiduciary Appointments/Guardians ad Litem.** The attorney must have at least five years in practice, with recent experience serving as a fiduciary or guardian ad litem. An attorney who acts as a guardian ad litem or fiduciary may not be covered by his or her professional liability insurance. Although insurance coverage is not a requirement, the attorney may wish to consult his or her professional liability insurance

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carrier prior to accepting such appointment.

- (10) **Evidence Code Section 730 Experts/Referees/Special Masters.** The attorney must have at least five years in practice, with experience serving as an Evidence Code section 730 expert, Code of Civil Procedure section 638 referee, or special master. The attorney also must have substantial expertise in the substantive area of law involved in the matter.
  - (11) **Health Care Decisions for Adults Without Conservators and Tuberculosis Detention Proceedings/Capacity Determinations.** Prior to filing the application and within the past three years, the attorney must have extensive experience in matters relating to medical treatment and bio-ethical issues. The attorney must be familiar with Probate Code section 3200 or Health and Safety Code section 121365 proceedings. These cases often involve complex treatment issues and may require immediate attorney response to medical emergencies. Consequently, the attorney must be familiar with the medical parameters underlying these issues in order to adequately represent the client's interests. The attorney must have at least three hours of MCLE in the areas of guardianships/conservatorships either during the attorney's current State Bar reporting period or the most recent period that has expired.
- (b) **Proof of compliance with the requirements set forth in this rule shall be provided using a mandatory local form filed as an attachment to Judicial Council form GC-011, and shall be filed in the same court location where proceedings under Welfare and Institutions Code section 5350 et seq. are filed.]**

**[RULE 7205  
SPOUSAL PROPERTY ELECTIONS**

Any written election under Probate Code section 13502 must include a declaration under penalty of perjury by the electing surviving spouse or registered domestic partner, or by the personal representative, guardian, or conservator of his or her estate acknowledging the following:

1. That the alternative procedures available pursuant to Probate Code sections 13540, 13541, 13545, 13600, and 13650 have been considered; and
2. That inclusion of the property in the administration of the decedent's estate could result in probate referee fees, personal representative commissions, and attorney fees that are higher than if an alternative procedure was used.]

Additions are shown with bold and brackets ([**example**]). Deletions are shown by ~~strikeout (example)~~.

## **RULE 7309**

### **ESTABLISHING CHILD SUPPORT ORDERS IN A GUARDIANSHIP CASE (PROBATE CODE SECTION 1500 ET. SEQ. AND FAMILY CODE SECTIONS 3950, 4000 AND 17400 ET. SEQ.)**

When the appointment of a guardian is granted in a Probate proceeding and the guardian seeks to establish child support orders, the guardian shall petition the court by filing a Request for Order using the mandatory Family Law Judicial Council Form with all supporting attachments in the existing guardianship case. A hearing shall be scheduled in the Family Law Department to address child support issues.

If an Income and Expense Declaration is filed by the guardian, the declaration shall report the income and expenses of the minor and need not report the income and expenses of the guardian.

~~Upon review of the pleadings, the Court may direct the Department of Child Support Services (DCSS) to take the appropriate action pursuant to Family Code Section 17400 et. seq. to establish, collect and enforce child support obligations as it relates to the biological parents.~~

## **[RULE 7400**

### **REQUIRED EDUCATIONAL PROGRAM FOR NON-PROFESSIONAL CONSERVATORS**

- a. **Each proposed conservator shall attend the educational program for non-professional conservators provided by the court pursuant to Probate Code section 1457 before the hearing on the petition for his or her appointment as a conservator. A conservator who resides outside of Riverside County may make arrangements to attend an equivalent program at a Superior Court in another county in California where available. The proposed conservator shall file written proof of attending the educational program at least four court days prior to the hearing.**
- b. **If a proposed conservator fails to meet these requirements, the court may continue or deny the petition for appointment, or make other appropriate orders. If the proposed conservator has been appointed as temporary conservator and fails to meet these requirements, the temporary conservator must attend the hearing on the petition for appointment as conservator. If the temporary conservator fails to attend the hearing or fails to show good cause why he or she failed to attend the educational program, the court may suspend the powers of the temporary conservator, terminate the temporary conservatorship, deny or continue the petition for appointment of conservator, or make other appropriate orders.**
- c. **This rule does not apply to a trust company as defined in Probate Code section 83, a public guardian as defined in Government Code section 27430**

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**et seq., a regional center established pursuant to Chapter 5 (commencing with section 4620) of Division 4.5 of the Welfare and Institutions Code, a licensed professional fiduciary as defined in Probate Code section 60.1, a conservator appointed under Welfare and Institutions Code section 5350 et seq., a limited conservator authorized to consent to the sterilization of an adult with a developmental disability pursuant to Probate Code section 1852, or a temporary conservator appointed pursuant to Probate Code section 2250 unless otherwise ordered by the court.]**

Additions are shown with bold and brackets (**[example]**). Deletions are shown by strikeout (~~example~~).